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September 8, 2009

**VIA ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW, Room TWB 204  
Washington, DC 20554

*Re: Ex Parte Submission in WC Docket No. 09-82*

Dear Ms Dortch:

Atlantic Tele-Network, Inc. ("ATN"), by its attorneys, hereby submits this *ex parte* letter in the above-referenced proceeding in order to place the attached "Trustee's Status Report For Omnibus Hearing of August 31, 2009" on the record. The Chapter 11 Trustee ("Trustee") and Innovative Communication Corporation ("ICC") submitted this status report to the Bankruptcy Court on August 28, 2009.

Several aspects of this status report are noteworthy. *First*, the Trustee and ICC have advised the Bankruptcy Court that Commission staff is already drafting an order approving the Consolidated Applications. They state (at p. 3): "In the proceeding before the U.S. Federal Communications Commission (the "FCC"), the Trustee and the RTFC have met with FCC staff to address their outstanding questions. The FCC staff is currently drafting an order acting on the application, which the Trustee and the RTFC hope the FCC will issue expeditiously." ATN urges the Commission not to rush to judgment on the serious issues raised in this proceeding, particularly since approving the applications will effectively deny the U.S. Virgin Islanders the ability to enter the modern Broadband Era.

*Second*, the status report advises the Bankruptcy Court (*see* p. 2) that RTFC plans to loan approximately US\$29 million to Vitelco. This is *less than 15%* of ICC's estimated funding requirement over the near term. The Trustee testified before the Bankruptcy Court that this requirement (including cap ex for only one year) was approximately US\$195 million. *See In Re Innovative Communication Company, LLC*, Case No. 06-30008(JKF), Dist. Ct. of V.I.,

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Bankr. Division, Transcript of Hearing on April 6, 2009, at 108 (“Q. So, even if we broke that down to \$20 million a year [in cap ex], we’re looking at about \$195 million in the relatively near future, worse case, is that correct? A. Yes. Say it again. Q. About 195 million. It would be the 100 million to the preferred stockholders, the 20 million for the pension, the 55 – and these are worse case numbers – 55 to the RUS and 20 million in Cap Ex, first year Cap Ex? A. That’s what that adds up to, yes.”). Please note that the Trustee also testified that he asked RTFC to invest funds in Vitelco, and that RTFC refused. *See id.* at 77.

This proposed loan confirms other indications that CFC plans to function as a mere caretaker of the ICC assets so it can re-market them in a year or two for a higher price under presumably better economic conditions. Recently, the President of ICC publicly admitted that CFC intends to flip the ICC assets so it can get a better price for them. *See* “New Owner for Innovative Likely by Year’s End,” *St. Thomas Source*, Aug. 28, 2009 (comments from Mr. Clarke Garnett, President of ICC). It is not in the public interest to install a caretaker regime that will operate ICC on a shoe-string budget to deny Virgin Islanders the benefits of intermodal competition between the incumbent local telephone company (Vitelco) and the incumbent terrestrial pay television operator (Innovative Cable).


*Third*, the status report disproves the claim that approving the Consolidated Applications, and re-constituting ICC’s highly-concentrated monopoly of telecommunications properties in the U.S. Virgin Islands, is necessary to stabilize ICC going forward. In particular, the status report advises the Bankruptcy Court (at p. 1) that “business operations remain stable and the operating subsidiaries continue to run and operate as projected pending closing of the Group 1 sale . . . . Liquidity and cash reserves also remain stable . . . .” Further, RTFC’s willingness to loan funds to Vitelco while the Consolidated Applications remain pending demonstrates that approval of the applications is not necessary for RTFC to continue loaning funds to ICC.

In sum, ATN submits that the status report repudiates any assertion that approval of the Consolidated Applications will provide closure to this situation and permit the ICC properties to go about their business under new ownership. To the contrary, the proposed new owner would simply function as a caretaker, in effect extending the bankruptcy process, with all its attendant uncertainties as to the identity of the future permanent owner of the assets. ATN submits that the Commission should approve the applications only on the condition that either Vitelco or Innovative Cable is divested to ensure that Virgin Islanders will have a market structure that is conducive to the deployment of broadband infrastructure.

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Sincerely,



Robert J. Aamoth

cc: David Krech  
Jodie May  
Kathy Harris  
Jeff Tobias  
Linda Ray  
Wayne McKee  
Jim Bird

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN, BANKRUPTCY DIVISION**

<b>In re:</b>  <b>INNOVATIVE COMMUNICATION COMPANY, LLC,</b>  <b>Debtor.</b> _____ /	<b>Chapter 11</b>  <b>Case No. 06-30008 (JKF)</b> <b>(Jointly Administered)</b>
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<b>In re:</b>  <b>INNOVATIVE COMMUNICATION CORPORATION,</b>  <b>Debtor.</b> _____ /	<b>Chapter 11</b>  <b>Case No. 07-30012 (JKF)</b>
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**TRUSTEE'S STATUS REPORT FOR  
OMNIBUS HEARING OF AUGUST 31, 2009**

Stan Springel, chapter 11 trustee (the "Trustee") of the bankruptcy estates of Emerging Communications, Inc. ("ECI"), Innovative Communication Company, LLC ("ICC-LLC") and, together with ECI, the "Parent Debtors"), and Innovative Communication Corporation ("New ICC") and, collectively with the Parent Debtors, the "Debtors"), files this Status Report for Omnibus Hearing of August 31, 2009, and respectfully states as follows:

**A. Business Operations**

As previously reported at the July 22<sup>nd</sup> omnibus hearing, business operations remain stable and the operating subsidiaries continue to run and operate as projected pending closing of the Group 1 sale, which has been preliminarily approved by this Court. Liquidity and cash reserves also remain stable, but, as anticipated, cash requirements in the third quarter will be higher than previous quarters due to premiums for renewal of hurricane insurance, expected increases in capital expenditures, and continued payoff of certain obligations created by prior

management. These additional cash requirements are not expected to create liquidity issues for the operating companies.

To assist Vitelco in making certain necessary capital expenditures, the Rural Telephone Finance Cooperative (the "RTFC")<sup>1</sup> has agreed to provide a loan to Vitelco and/or certain of its subsidiaries of approximately \$28,793,000. Negotiations between Vitelco and the RTFC are in their final stages and the loan documents are expected to be executed by the parties by or near the end of August 2009.

The Trustee and his professionals are also currently preparing for the upcoming collective bargaining agreement negotiations with the Steelworkers Union, which represents Vitelco's and Innovative Cable TV's hourly workers. The negotiation session is expected to begin on August 31, 2009 and last through September 11, 2009, with an additional week scheduled, if needed. Management is confident that an agreement will be reached with the Union during the scheduled negotiation period.

## **B. Business and Asset Sales**

### **1. Update Regarding the Group 1 Asset Sale**

Following the evidentiary hearing held April 6, 2009, the Court authorized, on an interim basis, the sale of the Group 1 assets to the RTFC. A written order memorializing this ruling was entered on April 9, 2009 (07-30012 DE 1206, the "Interim Sale Order"), which authorized the parties to seek all approvals and consents, both regulatory and non-regulatory, necessary to close the Group 1 sale.

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<sup>1</sup> The term "RTFC" shall collectively refer to the RTFC and its affiliated entities, as reflected in the *Notice of Designation of Buyer's Assignees Under Supplemental Motion for Order (A) Approving Sale of All of the Debtor's Primary Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving Assumption and Assignment of Certain Executory Contracts and Unexpired leases; and (C) Granting Related Relief* (07-30012, Dkt. No. 1196).

a. Pending Regulatory Approvals

The Trustee and the RTFC continue to prosecute their joint applications for telecommunications-regulatory consents. The pertinent regulators are actively considering the applications, and representatives of the Trustee and the RTFC will continue to correspond and meet with those regulators, as necessary, to ensure timely grants of consent.

On August 7, 2009, representatives of the Trustee and the RTFC reached agreement with the Staff of the U.S. Virgin Islands Public Services Commission ("PSC") with respect to the scope and schedule of the Hearing Examiner proceeding.<sup>2</sup> This proposed schedule agreed to by the PSC Staff (and submitted to the Hearing Examiner) was designed to permit PSC action on the transaction in time for consideration at this Court's November 30, 2009, omnibus hearing. However, on August 19, 2009, the PSC Hearing Examiner adopted an extended schedule that would take the proceeding into December 2009. The Trustee and the PSC are currently discussing with the PSC options for expediting that schedule, so that the regulatory timeline would be more closely aligned with the planned sale closing timeline. Meanwhile, the Trustee and the RTFC are currently preparing responses to PSC Staff discovery requests issued in connection with the transfer of control proceedings.

In the proceeding before the U.S. Federal Communications Commission (the "FCC"), the Trustee and the RTFC have met with FCC staff to address their outstanding questions. The FCC staff is currently drafting an order acting on the application, which the Trustee and the RTFC hope the FCC will issue expeditiously. The FCC has not scheduled this matter for a hearing and does not typically do so for transaction reviews.

In the proceeding before the British Virgin Islands ("BVI") Government, the Telecommunications Regulatory Commission ("TRC") has provided to the BVI Minister of

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<sup>2</sup> The PSC has selected attorney Ron Belfon as its hearing examiner.

Communications and Works its recommendation and a proposed decision, which the Trustee and the RTFC hope the Minister will issue expeditiously. Neither the TRC nor the Minister has scheduled this matter for a hearing, as they do not typically do so for transaction reviews.

In the proceeding before the Netherlands Antilles Government, the Trustee and the RTFC understand that the Minister of Transport and Communications has largely concluded his review of the transaction and are optimistic that he will grant consent expeditiously.

b. Updates Regarding Matters Addressed at July Omnibus Hearing<sup>3</sup>

The Belize Telecom Litigation. In March 2009, the Privy Council in London ruled against Belize Telecom, Ltd. ("Belize Telecom"), a wholly-owned subsidiary of ICC-LLC, in its pursuit of various claims against the Government of Belize. As a result of this ruling, it is highly unlikely that Vitelco will receive payments on a \$28.5 million note (the "Belize Note") payable by Belize Telecom and carried on Vitelco's balance sheet. The Belize Note, however, was 100% reserved for in Vitelco's 2006 financial statements because it was apparent to the Trustee and his staff that collection on the note was highly speculative. It is anticipated that the Belize Note will be fully written off in 2009 for tax purposes; however, this write-off will not directly affect Vitelco's rate of return, as the Belize Note was not part of Vitelco's regulated assets that are considered in calculating its regulated rate of return.

CFC/Fitch Credit Report. The Trustee is aware that Fitch Ratings has placed the National Rural Utilities Cooperative Finance Corporation on Rating Watch Negative. The Trustee does not believe that this will affect the scheduled closing of the Group 1 assets.

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<sup>3</sup> At the omnibus hearing held July 22, 2009, this Court requested that the Trustee's next status report include (a) an explanation of the effect that the recent ruling in the Belize Telecom, Ltd. litigation will have on New ICC's ability to upstream funds from Vitelco and (b) the effect of a recent credit downgrade of an RTFC affiliate on the closing of the Group 1 sale.

c. The Vitelco Preferred Shareholders

As previously reported to the Court, the RTFC and the Vitelco Preferred Shareholders have reached a global settlement that removed any hurdles to closing of the Group 1 sale that may have existed related to the Vitelco preferred shares and the Preferred Shareholders. The RTFC has acquired the Vitelco preferred shares from the Preferred Shareholders and *Trustee Springel's Motion for Order Approving Sale of the Debtor's Preferred Stock in the Virgin Islands Telephone Corporation* (06-30008 DE 1528), covering the remaining 250 shares of preferred shares held by ICC-LLC, is set for hearing on October 8, 2009.<sup>4</sup>

d. The Pension Benefit Guarantee Corporation

The Trustee and the RTFC continue to work with the PBGC in relation to the Group 1 asset sale. A \$2 million payment was made to the pension plans on December 31, 2008, with additional payments of \$628,000 each being made on April 15 and July 15, 2009. These payments are in addition to the net cash sale proceeds (approximately \$2.4 million) received by the ICC Consolidated Pension Plan Trust from the sale of real estate located on St. Croix, which was detailed in the June 15<sup>th</sup> Status Report. The next quarterly payment is due to be paid to the pension plans on or before October 15, 2009.

e. Prosser Global Stay Request

On August 27, 2009, in response to an order entered by the District Court vacating this Court's orders holding that Jeff Prosser does not have global standing to participate in the Debtors' cases, Jeff Prosser filed an emergency motion for a "global" 120-day stay of all bankruptcy proceedings. As will be more fully reflected in the Trustee's objection, the Trustee

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<sup>4</sup> Under the Preferred Stock Purchase Agreement, ICC-LLC agreed to sell its nominal portion of the preferred shares, pending approval of this Court, at the same price that was received by the other 99.7% of Preferred Shareholders. The actual closing of such purchase and sale will take place only following Court approval.



believes that Jeff Prosser's contentions that this Court has deprived him of his due process and other constitutional rights are without merit in law and completely unsupported by the facts of these cases.

2. Sale of Non- Business Assets:

No additional sales of non-business assets have occurred since the filing of the July 22<sup>nd</sup> Status report.

**C. Litigation Matters Before the Bankruptcy Court**

1. General Overview. The Trustee is a plaintiff in numerous adversary proceedings pending against Jeff Prosser, Dawn Prosser, the adult Prosser children (collectively, the "Adult Prosser Children"), and/or Michael Prosser. Among those adversary proceedings are the following: (a) Adversary Proceeding No. 07-03010 (the "Turnover Adversary Proceeding"); (b) Adversary Proceeding No. 07-03012 (the "New ICC Discharge Adversary Proceeding"); (c) Adversary Proceeding No. 08-03002 (the "Palm Beach Adversary Proceeding"); (d) Adversary Proceeding No. 08-03003 (the "Dawn Prosser FT Adversary Proceeding"); (e) Adversary Proceeding No. 08-03004 (the "Adult Children FT Adversary Proceeding"); and (f) Adversary Proceeding No. 08-03012 (the "Parent Debtors Discharge Adversary Proceeding").<sup>5</sup>

2. Pending Rulings: Exemptions, Discharge, and Palm Beach

The presentation of evidence in the exemptions contested matter concluded on October 3, 2008, and the parties presented closing arguments on December 1, 2008. Post-trial briefing is complete and the matter is ripe for the Court's ruling.

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<sup>5</sup> The Turnover Adversary Proceeding, the Dawn Prosser FT Adversary Proceeding, the Adult Children FT Adversary Proceeding, and Adversary Proceeding No. 08-03006 brought by Trustee James Carroll against Dawn Prosser (collectively, the "Jointly Administered Adversary Proceedings") were consolidated for discovery and trial purposes only pursuant to the Court's *Scheduling Order and Discovery Plan* entered on July 11, 2008 in each of the Jointly Administered Adversary Proceedings.

On November 13, 2008, the RTFC filed a motion for summary judgment in their discharge adversary against Jeff Prosser (07-3011 DE 60). Jeff Prosser filed an objection to the motion on December 2, 2008, and the RTFC filed their reply on December 9, 2008. The Court held a hearing on the matter on December 19, 2008, and all post-hearing submissions have been completed. This matter is ripe for the Court's ruling.

Discovery in the Palm Beach Adversary Proceeding has closed and the dispositive motion deadline has passed. On November 10, 2008, the Court heard argument on the Trustee's and Jeff Prosser's respective motions for summary judgment, and post-trial briefing on the cross motions for summary judgment has been completed. On April 24, 2009, the Court issued an order detailing additional information required for the Court to issue its ruling, and giving parties until May 8, 2009 to respond. Adv. Proc. No. 08-3002, Dkt. No. 185. The requested information has been submitted and the matter is ripe for ruling.

3. The Discharge Adversary Proceedings. On December 31, 2007, the Trustee, on behalf of New ICC, filed a complaint challenging the bankruptcy discharge sought by Jeff Prosser and the dischargeability of certain debts incurred by Jeff Prosser. On June 9, 2008, the Trustee, on behalf of the Parent Debtors, filed a similar complaint against Jeff Prosser. Jeff Prosser filed amended answers in each adversary on July 10, 2008. A status conference on the various discharge proceedings has been scheduled for August 31, 2009, with trial to commence the week of February 1, 2009.

4. Jointly Administered Adversary Proceedings.

Discovery in the Jointly Administered Adversary Proceedings has closed, the dispositive motion deadline has passed, and the Court has ruled upon all dispositive motions. Trial in the

Jointly Administered Adversary Proceedings commenced on November 17, 2008 and continued on November 18-20, 2008.

On December 5, 2008, the District Court withdrew reference in the Dawn Prosser FT Adversary Proceeding, as well as the adversary initiated against Dawn Prosser by Trustee James Carroll.

Trial before this Court in the ongoing Turnover Adversary Proceeding and in the Adult Children FT Adversary Proceeding continued, with trial in the Virgin Islands on December 8-9, 2008, in Pittsburgh February 9-11 and March 10, 2009, and back in the Virgin Islands the week of March 23, 2009. The evidentiary portion of the ongoing Turnover Adversary Proceeding and Adult Children FT Adversary Proceeding has now concluded. Post-trial briefing and proposed findings of fact were due by June 15, 2009, closing argument concluded July 23, 2009, and post-trial briefs are due by September 4, 2009.

5. The Dawn Prosser FT Adversary Proceedings.

Because reference in the Dawn Prosser FT Adversary Proceedings has been withdrawn, that adversary proceeding is currently pending before the District Court. On April 29, 2009, the District Court entered a Scheduling Order in the Dawn Prosser FT Adversary Proceeding, establishing various deadlines and setting the matter for trial commencing on December 1, 2009 in the U.S. Virgin Islands. Dist. Ct. Case No. 08-146, Dkt. No. 10. On August 24, 2009, respective counsel for trustee James Carroll, the Trustee, and Dawn Prosser filed their *Joint Motion to Abate and Continue Trial Setting* with the District Court (District Court Case No. 08-146, Dkt. No. 16, the "Motion to Abate"), requesting that the District Court abate and adjourn the Dawn Prosser FC Action until this Court is able to enter an order in the Turnover Adversary Proceeding. As reflected in the Motion to Abate, the parties mutually agree that the decision

reached by this Court in the Turnover Adversary Proceeding will define and possibly narrow the issues that must be tried before the District Court in the Dawn Prosser FC Action. The District Court has not yet ruled on the motion.

6. Chapter 11 Trustee's Avoidance Actions

In light of the two-year section 549(d) period to avoid unauthorized, postpetition transfers, the Trustee has commenced several avoidance actions against certain parties that received unauthorized, postpetition transfers after New ICC's petition date in transactions wherein there was no apparent benefit to New ICC. At this time, the Trustee has commenced approximately a dozen or so such actions. The Trustee anticipates commencing additional actions through the two-year anniversary of the entry of the order for relief.

**D. Appeals**

There are currently four appeals pending before the Third Circuit<sup>6</sup> and four appeals pending before the District Court.<sup>7</sup> On August 10, 2009, the District Court vacated this Court's orders holding that Jeff Prosser did not have global standing in the Debtors' cases (District Court Appeals 08-114 and 08-115). On August 19, 2009, the District Court entered orders dismissing appeals filed by Jeff Prosser, on behalf of the Parent Debtors, challenging this Court's orders (a) denying the Parent Debtors' request for appointment of a responsible officer and (b) ordering appointment of a trustee in the Parent Debtors' cases (District Court Appeals 07-0036 and 07-0037). There has been no other substantive activity in the pending appeals.

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<sup>6</sup> Including Third Circuit Appeals 08-2626 (Jeff Prosser's appeal of the District Court order affirming the Terms and Conditions order); 08-2692 (Jeff Prosser's appeal of the District Court order affirming the Prosser conversion order); 08-3894 (the Greenlight Entities' appeal of the District Court order affirming the order overruling Greenlight's objection to the proof of claim filed by Banco Popular); and 09-1827 (Dawn Prosser's appeal of the District Court order denying her leave to appeal, which Dawn Prosser has voluntarily moved to dismiss).

<sup>7</sup> Including District Court Appeals 07-130 (John Raynor's mandamus action arising from the Trustee's appointment in the New ICC case); 08-113 (Dawn Prosser's appeal of the second Lake Placid sale order arising from Adversary No. 06-3009); 09-0073 (Merrill Lynch Credit Corporation's appeal of the order denying its motion to lift stay); and 09-109 (Robert Craig's appeal of the order dismissing his adversary proceeding against the Greenlight Entities).

Dated: August 28, 2009

Respectfully submitted,

By: /s/ Daniel C. Stewart

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